

History of Mediation: Sustainable Dispute Resolution Mechanism

S, Yashaswini

Assistant Professor, KLE Law College, Bengaluru, A Constituent College of KLE Technological University

Abstract

Mediation has emerged as one of the most effective and sustainable dispute-resolution mechanisms in India. India possesses a rich legal legacy, deeply rooted in its social, religious, cultural, and legal traditions. This paper explores the History of Mediation in India and its Relevance in Contemporary times as the most effective and sustainable dispute resolution mechanism. Unlike adjudication, Mediation emphasizes cooperation, maintains confidentiality, and requires voluntary participation by the parties. Mediation is a process in which an impartial neutral third party facilitates communication between disputing parties in assisting them to arrive at a mutually acceptable settlement. Mediation is a method of resolving conflicts through dialogue and mutual consent with the assistance of an impartial mediator. This paper highlights the conceptual framework of Mediation from ancient India, emphasising the concept of Dharma (Righteous Duties) and the Role of Dialogue (Samvada) in dispute resolution. It also aims to study the medieval period plural legal system, highlighting the role of reconciliation (Sulh) as a preferred method for dispute settlement and the relevance of Mediation in contemporary legal institutions. In the post-independence period, the Indian Constitution emphasizes social justice and participatory governance through legislative measures such as the Legal Services Authorities Act, the Arbitration and Conciliation Act, and the Mediation Act. Mediation has been a time-tested mechanism for resolving disputes. This paper, through an interdisciplinary approach, seeks to bridge the legal history and Mediation as a sustainable practice for resolving disputes in India and beyond.

Keywords: Mediation, Legal History, Alternative Dispute Resolution, Sustainable practice, Socio–Legal History.

1. Introduction

1.1 Background of Mediation

Mediation is a dispute resolution process in which a neutral facilitator assists parties in reaching a mutually acceptable settlement through dialogue and negotiation. Mediation is a method of resolving conflicts through dialogue and mutual consent with the assistance of an impartial mediator. Mediation emphasises on cooperation, dialogue and mutual understanding. In the modern legal system, Mediation has gained importance due to increasing court backlogs, high litigation costs and delay in justice. Recognising these challenges, Supreme Court of India has encouraged Mediation as an effective alternative for dispute resolution.

Mediation in India has been rooted in traditional practices and supported by statutory laws. Mediation thus promotes accessible, participatory and sustainable justice. Mediation is a way to strengthen justice delivery system.

1.2 Research Gap and Research Objectives

Despite existing scholarship on Alternative Dispute Resolution mechanisms in India, most of the scholarly works focus majorly on institutional mediation, court-annexed ADR systems and contemporary legislative frameworks. Limited attention has been paid to the historical continuity of mediation practices from ancient Indian traditions to contemporary statutory frameworks. The historical roots of mediation embedded in Dharma shastras, Panchayat traditions and the Islamic concept of Sulh remain comparatively underexplored within contemporary ADR discourse. This paper seeks to bridge the legal history and Mediation as a sustainable practice for resolving disputes in India by examining the historical evolution of mediation across ancient, medieval and modern periods. This study also aims to analyse mediation as a sustainable dispute resolution mechanism that strengthens access to justice and social harmony. In the global context, Frank Sander's "Multi-Door Courthouse" model advocated the integration of multiple dispute resolution mechanisms alongside litigation, thereby strengthening participatory and accessible justice systems.

2. Literature Review

Scholarly literature highlights mediation as an important alternative dispute resolution mechanism that emphasises on dialogue, conciliation and mutually acceptable settlements. Modern scholars emphasise on mediation as a participatory and collaborative efforts over litigation. Carrie Menkel-

Meadow views mediation as a collaborative and problem-solving approach that moves beyond rigid rights-based adjudication. Similarly, Christopher W. Moore conceptualizes mediation as a structured facilitative process involving neutral third-party intervention. Scholars such as Laurance Boulle and Nadja Alexander observes that mediation process has been institutionalized.

In the Indian context, researchers including P.C. Rao and Sriram Panchu have examined the development of mediation within the legal system through institutions like Lok Adalat's, Court annexed mediation centres and legislative frameworks supporting alternative dispute resolution. However, existing scholarship focuses on institutional mediation as an alternative dispute resolution mechanism. Fewer studies explore the historical roots of mediation deeply embedded in India's legal traditions which includes Dharmashastras, Panchayat system and concept of Sulh in Islamic Jurisprudence. This study seeks to bridge the gap by examining the historical evolution of mediation in India and demonstrating its continuity and relevance as a sustainable resolution mechanism across different historical periods.

3. Methodology

This study adopts a qualitative and doctrinal research methodology. The research is based on a critical analysis of primary legal sources such as Dharmashastras, Arthashastra, Islamic legal texts relating to Sulh and modern legislative frameworks. The study also relies on secondary historical sources, scholarly commentaries, reports and academic writings on mediation and dispute resolution mechanisms. The research follows an interdisciplinary approach combining legal history, jurisprudence and contemporary ADR studies.

4. Historical Evolution of Mediation in India

4.1 Conceptual Framework of Mediation Across the Yugas

The roots of Mediation can be traced back to concept of Dharma – righteous or moral duty evolved over Yugas or time cycle. During the Krita Yuga, social order was regulated by ethical conduct. Dispute resolution was achieved through dialogue (Samvada). The following verse from the Rigveda (10.191.2) highlights the process of Mediation, emphasizing mutual dialogue and understanding.

saṃ gacchadhvaṃ saṃ vadadhvaṃ saṃ vo manāṃsi jānatām |

devā bhāgaṃ yathā pūrve saṃjānānā upāsate ||

“Meet together, talk together, let your minds apprehend alike;

in like manner as the ancient gods concurring accepted their portion of the sacrifice.”

With the emergence of the Kingship in the Treta Yuga, the King was treated as God's representative on earth and as the protector of Dharma. It was the duty of the King to guide his people to observe Dharma, Artha, Kama in a rightful manner to attain salvation or Moksha. The concept of universal peace over conflict is reiterated in the following verse in the Ramayana.

Śāntiḥ sarvārtha-siddhaye

“Peace leads to accomplishment of all good objectives.”

The earliest reference to Mediation is found in the Yuddha Kanda of the Ramayana, where Angada is deputed as a messenger to Ravana's court before resorting to war. Angada appeals to Ravana's reason and warns him of the consequences of war, and emphasises reconciliation over retaliation. This highlights the role of a Duta, or messenger, seeking resolution through dialogue and moral persuasion. In the same Yuddha Kanda of Ramayana (6.35.8), Vibhishana extrapolates on the benefits of mediation in the following verse.

Sandadhāno hi kālena Vigṛhṇan saha chāribhiḥ ||

Sva-pakṣa-vardhanaṁ kurvan Mahad aiśvaryaṁ aśnute ||

“He who concludes peace even with enemies or wages war at a fitting time strengthens his own party and attains a great power.”

In the Dwapara Yuga, Mediation became more diplomatic in nature, where Krishna plays the role of a mediator. Krishna as a mediator is a classic example of third-party intervention aimed at preventing armed conflict. It highlights forgiveness and compromise as tools of Mediation. Krishna's diplomatic mission is described in the Udyoga Parva of the Mahabharata.

Kṣamā balam aśaktānāṁ śaktānāṁ bhūṣaṇaṁ kṣamā

“For the weak, forgiveness is strength; for the strong, forgiveness is an ornament.”

Krishna as a peace envoy, seeks to resolve the conflicts between the Pandavas and the Kauravas through dialogue and moral persuasion before the Kurukshetra war. His proposal for territorial settlement reflects interest-based approach with mutual understanding. Although Mediation failed, but it demonstrates voluntary cooperation between parties.

The Mahabharata also presents Vidura, who constantly advised Dhritarashtra and Duryodhana to follow Dharma and avoid war, representing advisory Mediation.

Na sa dharmo yato hiṁsā na sā vidyā yato bhayaṁ

“That is not Dharma which leads to violence,
and that is not actual knowledge which creates fear.

The Mahabharata consists of different models of Mediation represented by Krishna, Vidura, Bheeshma, Sanjaya and Narada. Krishna represents interest-based Mediation whereas Vidura and Bheeshma represent moral and advisory based Mediation. Sanjaya functioned as a messenger through dialogue, and Narada as a spiritual mediator rooted in Dharma.

4.2 Foundation of Mediation in Ancient India

The Dharmashastras are the earliest authoritative sources for understanding the Hindu Jurisprudence that prevailed in ancient India. These Dharmashastras were compiled between 600 – 200 B.C. The Dharmashastras emphasizes on moral duty (Dharma). It recognises social customs and establishes legal norms for the welfare of mankind. The Dharmashastras such as Manu Smriti, Yagnavalkya Smriti, Brihaspati Smriti, and Narada Smriti suggests for Mediation, reconciliation and mutual settlement and considers litigation as a last resort.

Manusmriti emphasises settlement by mutual agreement mediated by the wise and impartial persons. The following verse from Manusmriti (8.45) recognizes Mediation as a lawful process to settle disputes.

Samavāye tu ye viprāḥ samāgatāḥ samadarśinaḥ

“Learned persons should resolve disputes through mutual agreement.”

Yagnavalkya recognizes conciliation and negotiation over adjudication. The following verse from the Yagnavalkya Smriti recommends resolving disputes through mediation and negotiation. They (parties) should not immediately resort to formal judicial proceedings.

Sāmādibhiḥ samādheyāḥ vivādaḥ prathamam budhaiḥ |

Na tu nyāyena kartavyaḥ kāryo yatnāt kadācana ||

“Wise persons should first resolve disputes through conciliation and negotiation. They should not resort to formal judicial proceedings.”

Yagnavalkya also recognises the role of a mediator (Maadyastha), where a settlement achieved through a Madyastha is legally valid and acceptable to both parties.

Madhyasthaiḥ sādḥito nyāyo grāhyaḥ syād ubhayor api

“A settlement achieved through a Madyastha is acceptable to both parties.”

Narada Smriti recognizes consent-based justice whereas Brihaspati Smriti stresses upon coexistence of Dharma and Nyaya for social harmony. Thus, Dharmashastras prioritized mediation, conciliation and negotiation before adjudication. The Dharmashastras laid down foundation for socially sustainable and restorative justice in Indian society.

Kautilya's Arthashastra of 4th Century B.C., is one of the systematic works on polity, law and administration. Arthashastra treats Mediation as an effective tool of statecraft and conflict resolution.

Sāmopāyaḥ śreṣṭhaḥ sarvakāryeṣu kīrtitaḥ

“Conciliation is the best means in all affairs.”

Kautilya also speaks of four-fold policy which is the core philosophy of modern resolution mechanism. He prescribes Sāma, Dāna, Bheda and Daṇḍa as fourfold method of conflict resolution. He prioritizes Conciliation (Sāma) over other methods. Only when Mediation fails, other harsh methods should be put into practice. The incorporation of Mediation reflects early model of institutionalized alternative dispute resolution.

Apart from the textual references, there existed Community-based Mediation and Panchayat system. Village Panchayats or assembly of village elders resolved disputes in an amicable manner. These institutions functioned on principles of transparency, social inclusivity and justice accessible to all. It also minimized the complex judicial procedures making justice accessible to all.

4.3 The Concept of Sulh in Medieval India

During Medieval period, Islamic jurisprudence played a prominent role in shaping dispute resolving mechanisms under the rule of Sultans of Delhi and Mughals. The Medieval period legal tradition was characterised by plural legal systems. Mediation during medieval period functioned at Imperial administration, Judicial institutions and at community forums. The core philosophy of dispute resolution in Islamic jurisprudence was the Sulh (Reconciliation). The Quran establishes reconciliation as moral and ideal. This concept of Sulh became the theological foundation for Mediation in Islamic legal systems. The classical text such as Al-Hidayah recognizes Sulh as a legally binding contract. It recognizes voluntary settlement arrived by the parties is legally enforceable. The Qazis should encourage parties to go for reconciliation before formal adjudication.

During the Delhi Sultanate period, reconciliation was regulated through legal digests such as Fatwa-e-Tatarkhaniya and Fiqh-e-Firoshahi. These works recognized negotiated settlements as dispute resolution in case of civil and commercial matters.

During the 16th century, Akbar institutionalised mediation, emphasising tolerance, conciliation, and universal harmony. Akbar emphasized Sulh-i-Kul (Universal peace). He gave importance to religious tolerance and social inclusivity. Sulh-i-Kul extended the concept of Mediation into the socio-religious life of people, promoting universal peace through mutual understanding.

In the 17th century, Aurangzeb appointed a syndicate of learned theologians, who composed the legal digest “Fatawa-i-Alamgiri.” This Fatawa-i-Alamgiri recognizes Sulh as valid in civil disputes. It directs Qazis to encourage reconciliation in civil and family matters.

Medieval mediation reveals the existence of an inclusive policy and a socially embedded system of dispute resolution. Mediation, operating within a plural legal tradition and customs, emphasises reconciliation, dialogue and mutual settlement over adversarial litigation. The doctrine of Sulh, administrative encouragement and community-based forums reinforced peaceful settlement and universal harmony. The medieval experience demonstrates that Mediation was a structured and sustainable system deeply rooted in legal and moral traditions. This further influenced the contemporary alternative dispute resolution mechanisms.

4.4 Mediation in Colonial India

The advent of Europeans into India marked a fundamental shift in India’s Dispute resolution mechanism. The colonial administration introduced a centralised, codified and uniform model of justice in India. This system emphasised judicial proceedings, procedural codes and professional legal representation, which gradually replaced the indigenous Mediation and community-based resolution mechanisms. Litigation became more expensive, time-consuming, and inaccessible to ordinary people. Nevertheless, colonials recognised the practical advantage of the indigenous dispute-resolution system. Panchayats and community-based forums continued to exist just to reduce judicial backlog and administrative burden.

Overall, the colonial period restructured dispute resolution mechanisms in India by prioritising them for formal adjudication. Colonials transformed Mediation from a socially embedded, participatory process into a marginal and informal practice. Although the colonial system introduced procedural uniformity, it simultaneously reduced accessibility and cultural relevance.

These structural changes left a lasting impact on India's legal culture, underscoring the need to reiterate the mediation mechanism as an essential component of an inclusive and sustainable justice system.

4.5 Post-Independence Developments

The Indian Constitution embodies the principles of social justice, equality, access to justice and participatory governance. The Constitution aims to ensure fair access to legal remedies irrespective of economic and social status. The Constitution promotes peaceful methods of resolving disputes and encourages peace and cooperation among citizens. These Constitutional values create a conducive environment for Mediation, focusing on dialogue, mutual respect and voluntary settlement.

The Indian Government has introduced several laws to formally recognise mediation, negotiation and conciliation as alternative dispute resolution mechanisms. One of the most crucial steps was the enactment of the Legal Services Authorities Act, which made the free legal aid service available to poor people. Under this Act, Lok Adalats were established to settle disputes through dialogue and mutual settlement. These forums helped ordinary people resolve their problems quickly and efficiently.

The Arbitration and Conciliation Act also gave legal status to Conciliation and Mediation in commercial and civil matters. The Act helped parties resolve their disputes with a neutral third party. Recently, the Mediation Act was introduced in 2023 to provide a legal framework for Mediation. It aimed to strengthen alternative dispute resolution and improve access to justice. The Act formally recognises Mediation as an independent and structured dispute resolution mechanism. It clearly defines the duties and responsibilities of mediators and parties involved, lays down ethical standards, and provides rules for maintaining confidentiality and enforcing mutually agreed settlements. The Act also encourages pre-litigation Mediation, making it mandatory in specific categories of disputes before approaching the Courts.

In addition to legislative reforms, the Judiciary has actively supported Mediation through institutional mechanisms. Under the supervision of the Supreme Court of India, Mediation centres have been established at High Courts and District Courts across India to assist disputing parties through Mediation. These Court-annexed centres help parties understand the benefits of mutual settlement and ensure fairness and neutrality in the process. As a result, Mediation has become

more systematic, transparent and accessible to all. Even litigants view Mediation as a reliable alternative to lengthy court proceedings. Overall, the Mediation as an alternative dispute resolution mechanism has become a credible component of India's justice delivery system.

5. Findings and Discussion

The study reveals that mediation in India has deep historical roots and has been a vital part of India's legal history since times immemorial. Analysis of ancient Indian texts such as Vedas, Dharmashastras, Puranas and Arthashastra indicates that early dispute resolution mechanism prioritized dialogue, conciliation over adversarial adjudication emphasising over Dharma. These text reveals that mediation was strongly rooted within the moral and social framework of early Indian society. The findings also indicate that during medieval period, mediation practices were included as part of Islamic Jurisprudence. The Concept of Sulh (Reconciliation) was recognised as a part of dispute settlement encouraging voluntary and mutually agreed settlements. The study further explores the colonial legal system which introduced formal judicial structures that gradually marginalized indigenous and traditional dispute resolving techniques. However, community-based dispute resolution system such as panchayat system continued to operate informally at village level.

In the post-independence period, mediation has been revived through legislative frameworks and institutional reforms aimed at strengthening alternative dispute resolution mechanism. Overall, the study demonstrates that mediation in India represents a historical continuity rather than a recent legal innovation which makes it a sustainable and socially responsive dispute resolution mechanism. While courts play a significant role in adjudicating conflicts, Courts decide disputes, but only dialogue can resolve them. In the present context of increasing litigation, judicial backlogs, the question of the hour is how mediation can be effectively integrated and strengthened within formal legal framework to promote accessibility, participatory and sustainability. Strengthening dispute resolution mechanisms through awareness, institutional support and policy reforms may contribute significantly to reducing the burden on courts preserving social harmony and promoting universal peace.

Mediation also aligns with the objectives of the United Nations Sustainable Development Goal 16 (SDG 16), which emphasises Peace, Justice and Strong Institutions. By promoting dialogu, consensual participation and negotiated settlements, mediation strengthens inclusive access to

justice and reduces excessive dependence on adversarial litigation. It encourages participatory governance, institutional efficiency and social harmony by minimising judicial burden and peaceful dispute resolution at both community and institutional levels. In this context, mediation operates not merely as a legal practice but also as a sustainable governance and democratic participation. Therefore, strengthening mediation through legislative reforms, institutional support, public awareness and participation can significantly contribute towards building peaceful, inclusive and resilient societies.

6. Conclusion

In the mediation context, dispute resolution is understood as a consensual, non-adversarial process in which a neutral third party facilitates communication between disputing parties to help them arrive at a mutually acceptable settlement. Unlike litigation or even traditional arbitration, mediation does not involve a binding determination imposed by an authority. Instead, it emphasizes dialogue, cooperation, confidentiality, and party autonomy.

When viewed through this lens, early Indian dispute resolution practices—particularly village panchayats—closely resemble modern mediation. The Panchas or respected elders did not function as judges in the strict adversarial sense; rather, they facilitated discussion, encouraged compromise, and sought to restore social harmony. The objective was not merely legal correctness, but community balance and reconciliation. The process was flexible, informal, and rooted in consensus-building.

Even during the colonial period, although formal courts embodied adversarial characteristics, many dispute resolution mechanisms retained a mediated character. Arbitration and conciliatory procedures often operated in a grey space between adjudication and negotiation. The neutral figure sometimes guided discussion rather than strictly determining rights and liabilities. Thus, in the mediation context, early Indian dispute resolution was not sharply adversarial or rigidly defined. It reflected a spectrum of processes where facilitation, compromise, and restorative outcomes were central.

Therefore, mediation in India is not a modern import but an institutional evolution of longstanding indigenous practices, later systematized within formal ADR frameworks while preserving its core emphasis on negotiated settlement and social cohesion. Mediation not only resolves disputes effectively but also contributes to economic, social, and institutional sustainability. Therefore,

Mediation should be encouraged as primary method of dispute resolution to ensure responsive, participatory and sustainable justice in India.

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Received: Apr 02, 2026

Accepted: May 04, 2026

Published: Jul 01, 2026

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